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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,709	04/11/2001	Karla E. Williams	460.2050USU	1658

7590 05/05/2004

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/832,709	WILLIAMS ET AL.	
	Examiner	Art Unit	
	Jacqueline F Stephens	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-7,10-15,20-24 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26 and 27 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5-7, 10-15, 20-24, 28-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/3/04 has been entered.

Response to Arguments

2. Applicant's arguments filed 3/3/04 have been fully considered but they are partially persuasive. Regarding claims 11-14 and 26, applicant's arguments are persuasive. Applicant argues Jacob is limited to the use of ascorbic acid and no other compounds or ingredients are disclosed or suggested in Jacob as having malodor counteractant properties, since Jacob discloses the glycerin as a carrier for the ascorbic acid. Therefore, applicant's arguments that Jacob does not disclose a malodor counteract material comprising glycerin and at least one additional malodor counteractant material selected from the claimed Markush group are persuasive.

Regarding claims 1, 5, 24, and 28-30, applicant's arguments are not persuasive. Applicant argues Jacob only disclosed the use of ascorbic acid primarily for its antitoxin effect and secondarily for its deodorization effect and the glycerin is an inert ingredient that serves as a carrier for the ascorbic acid. While, the examiner agrees that the

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glycerin itself does not serve as a malodor counteractant in the invention of Jacob, the ascorbic acid does as Jacob explicitly teaches ascorbic acid as a deodorant (Abstract, col. 7, line 6 through col. 8, line 3). Therefore, even though Jacob teaches the ascorbic acid as an antitoxin, the ascorbic acid still performs the function of a malodor counteract and meets the limitations of claim 1.

3. Regarding claims 6, 7, 10-15, and 20-23 applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 5, 24, and 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacob USPN 4722936.

As to claims 1 and 28, Jacob discloses a tampon for absorbing body fluids comprising: one or more malodor counteractant materials selected from the claimed group of materials, wherein the counteractant materials is in a liquid form (Abstract, col. 7, line 60 through col. 8, line 3 – Jacob discloses the ascorbic acid is applied to the tampon in liquid form and allowed to dry). It is old and well known that ascorbic acid is

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Vitamin C and can be used effectively as a malodor counteractant in its natural or synthetic form. Jacob discloses one or more malodor counteractant materials is present in an amount between 100mg and 500mg, which is included in the claimed range (col. 4, lines 32-47).

As to claims 5, 29, and 30, Jacob discloses one or more malodor counteractant materials is present in an amount between 100mg and 500mg, which is included in the claimed range (col. 4, lines 32-47).

As to claim 24, Jacob discloses a method of deodorizing a vaginal area comprising apply the tampon of claim 1 to the vaginal area, wherein one or more malodor counteractant materials counteracts malodor in the vaginal area (col. 1, lines 57-61; col. 3, lines 5-7, and lines 54-63; and col. 4, lines 1-7). It is old and well known that ascorbic acid is Vitamin C and can be used effectively as a malodor counteractant in its natural or synthetic form.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1, 3, 6, 7, 10-15, and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yabrov USPN 4880417.

As to claims 1, 3, 6, 7, 10-13, and 20-22, Yabrov discloses glycerin and a fragrance as a malodor counteractant material (col. 4, lines 21-24). Yabrov does not specifically disclose his invention as a tampon. Yabrov discloses the glycerin is used for neutralizing odor caused by hydrogen sulfide gas (col. 4, lines 41-43). It is old and well known that hydrogen sulfide gas is one of the gases associated with menstrual fluids. For example, Yi et al. US 2003/0093043 teaches hydrogen sulfide as a chemical produced during menstrual periods (paragraph 0050). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the invention of Yabrov in an article for absorbing menstrual fluids, such as a tampon. Yabrov discloses the malodor counteractant material is present in liquid form (col. 4, lines 26-31). Additionally it is old and well known that glycerin is a natural substance.

Yabrov is silent on the claimed amount of counteractant material present in the absorbent. However, one having ordinary skill in the art would be able to determine through routine experimentation the ideal levels of malodor counteractant for a particular application.

As to claim 14, Yabrov discloses the fragrance is in liquid form (col. 4, lines 31-32).

As to claims 15 and 23, Yabrov does not disclose the additional malodor counteractant is naturally sourced. Yabrov discloses a fragrance as an additional malodor counteractant and teaches any appropriate material may be used in addition to the glycerin. Many naturally sourced products such as fragrant oils are used as masking agents or perfuming agents in absorbent articles. It would have been within the level of one of ordinary skill in the art to use a naturally sourced masking agent as the additional malodor counteractant.

Allowable Subject Matter

9. Claims 26 and 27 are allowed. The following is a statement of reasons for the indication of allowable subject matter: As to independent claims 26 and 27, the method of deodorizing a vaginal area using the overall claimed combination of a malodor counteract material comprising glycerin and at least one additional malodor

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counteractant material selected from the claimed Markush group is neither anticipated nor rendered obvious by the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703)305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Examiner
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